

AMENDED IN ASSEMBLY JANUARY 26, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

Assembly Constitutional Amendment

No. 22

Introduced by Assembly Member La Malfa

(Principal coauthor: Senator McClintock)

(Coauthors: Assembly Members DeVore, Garcia, La Suer, Maze, McCarthy, Aghazarian, Benoit, Blakeslee, Bogh, Cogdill, Emmerson, Haynes, Shirley Horton, Houston, Huff, Leslie, Mountjoy, Nakanishi, Negrete McLeod, Parra, Plescia, Sharon Runner, Spitzer, Strickland, Tran, Umberg, Villines, Walters, and Wyland)

(Coauthors: Senators Ackerman, Ashburn, Battin, Campbell, Cox, Denham, Dutton, Florez, Hollingsworth, Maldonado, Margett, Morrow, and Poochigian)

July 13, 2005

Assembly Constitutional Amendment No. 22—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 19 of Article I thereof, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

ACA 22, as amended, La Malfa. Eminent domain: condemnation proceedings.

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. It also authorizes the Legislature to provide for possession by the condemnor following commencement of the eminent domain proceedings upon deposit in court, and prompt

release to the owner, of the money determined by the court to be the probable amount of the just compensation.

~~This measure would add a condition that private property may be taken or damaged by eminent domain proceedings only for a stated public use and only upon an independent judicial determination on the evidence that the condemnor has proven that no reasonable alternative exists. The measure would require that the property be owned and occupied by the condemnor, except as specified, and used only for the stated public use.~~

~~This measure would also provide that if the property ceases to be used for the stated public use, the former owner or a beneficiary or an heir, who has been designated for this purpose, would have the right to reacquire the property for the compensated amount or its fair market value, whichever is less, before the property may be sold or transferred.~~

This measure would provide that private property may be taken or damaged only for a stated public use and may not be taken or damaged without the consent of the owner for purposes of economic development, increasing tax revenue, or any other private use, nor for maintaining the present use by a different owner. The measure would also require that the property be owned and occupied by the condemnor, except as specified, and used only for the stated public use.

This measure would also provide that if the property ceases to be used for the stated public use, the former owner would have the right to reacquire the property for its fair market value. This measure would further require a county assessor, upon property being so reacquired, to appraise that property for purposes of property taxation at its adjusted base year value as had been last determined at the time the property was acquired by the condemnor.

This measure would define “just compensation” for purposes of condemnation and specify the showing required in an action challenging the validity of a taking.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

- 1 WHEREAS, This measure shall be known and may be cited as
- 2 “The Homeowners and Private Property Protection Act of
- 3 2006”; and

1 *WHEREAS, The Legislature finds and declares all of the*
2 *following:*

3 *(a) Our California Constitution provides that all people have*
4 *inalienable rights, including the acquisition, possession, and*
5 *protection of property and that no person shall be deprived of*
6 *property without due process of law.*

7 *(b) Our California Constitution further provides that private*
8 *property may not be taken or damaged by government except for*
9 *public use and only after just compensation has been paid to the*
10 *property owner.*

11 *(c) Notwithstanding these clear constitutional guarantees,*
12 *state and federal courts have not protected these rights from*
13 *encroachment by state and local government through the*
14 *exercise of their powers to take private property for the use or*
15 *gain of another private owner or owners.*

16 *(d) The decision of the United States Supreme Court (Kelo v.*
17 *City of New London) on June 23, 2005, permitted a city to*
18 *exercise its power of eminent domain to take private property for*
19 *the purpose of transferring ownership to a private developer,*
20 *which means that Californians no longer have any federal*
21 *protection against their property being taken for the private gain*
22 *of others.*

23 *(e) Furthermore, the judicial processes available to an owner*
24 *of property to obtain just compensation when his or her property*
25 *is taken for a legitimate public use are burdensome, costly, and*
26 *unfair; and*

27 *WHEREAS, The Legislature further finds and declares all of*
28 *the following:*

29 *(a) State and local government shall be limited to using its*
30 *powers to take private property only for public uses, such as*
31 *roads, schools, parks, and public facilities. Private property must*
32 *not be taken from one owner and given to another private owner*
33 *for any reason unless the original owner is a willing seller.*

34 *(b) When state or local government takes private property for*
35 *public purposes, the owner shall receive just compensation for*
36 *what has been taken or damaged. If the owner and the*
37 *government are unable to agree to a fair price, the owner shall*
38 *be entitled to a fair and efficient judicial process to determine the*
39 *appropriate amount for the government to pay as determined by*
40 *a jury; now, therefore, be it*

1 RESOLVED BY THE ASSEMBLY, THE SENATE
2 CONCURRING, That the Legislature of the State of California at
3 its 2005-06 Regular Session commencing on the sixth day of
4 December 2004, two-thirds of the membership of each house
5 concurring, hereby proposes to the people of the State of
6 California that the Constitution of the State be amended as
7 follows:

8 First—That Section 19 of Article I thereof is amended to read:

9 SEC. 19. (a) Private property may be taken or damaged *only*
10 for a *stated* public use *and* only when just compensation,
11 ascertained by a jury unless waived, has first been paid to, or into
12 court for, the owner. *Private property shall not be taken or*
13 *damaged without the consent of the owner for purposes of*
14 *economic development, increasing tax revenue, or for any other*
15 *private use, nor for maintaining the present use by a different*
16 *owner.* The Legislature may provide for possession by the
17 condemnor following commencement of eminent domain
18 proceedings upon deposit in court and prompt release to the
19 owner of money determined by the court to be the probable
20 amount of just compensation.

21 (1) *“Just compensation” includes, but is not limited to, the*
22 *cost of acquiring comparable property; all costs and losses*
23 *incurred due to the condemnation, including, but not limited to,*
24 *loss of income, loss of business good will, and relocation costs;*
25 *and attorney’s fees upon determination that the amount offered*
26 *by the public agency was less than the amount ascertained by the*
27 *jury, or the court if a jury is waived.*

28 (2) *Possession of the money so deposited may be taken without*
29 *prejudicing the right to challenge the amount of compensation.*

30 (b) *Property taken by eminent domain shall be owned and*
31 *occupied by the condemnor, or by another governmental agency*
32 *by agreement with the condemnor, or leased to entities that are*
33 *regulated by the Public Utilities Commission. All property that is*
34 *taken by eminent domain shall be used only for the public use*
35 *stated at the time of the taking, except for limited purposes,*
36 *public or private, that are incidental to that use.*

37 (c) *When property taken by eminent domain ceases to be used*
38 *as stated at the time of the taking, or fails to be put to that use*
39 *within 10 years, the former owner shall have the right to acquire*
40 *the property at fair market value. Notwithstanding subdivision*

1 (a) of Section 2 of Article XIII A, upon reacquisition the property
2 shall be appraised by the assessor for purposes of property
3 taxation at its base year value, with any authorized adjustments,
4 as had been last determined in accordance with Article XIII A at
5 the time the property was acquired by the condemnor.

6 (d) In any action challenging the validity of a taking under this
7 section, the person challenging the taking shall not be limited to
8 review of the administrative record and the court shall not afford
9 deference to any legislative finding by the condemnor. The
10 person challenging the taking shall be entitled to an award of
11 attorney's fees from the condemnor if the court finds that the
12 condemnor's actions are not in compliance with this section.

13 (e) This section does not apply to asset forfeiture upon
14 conviction of a crime in a manner prescribed by law.

15 Second—Section 19 of Article I, as amended herein, shall be
16 self-executing and shall apply to all condemnation actions
17 commenced or pending after June 23, 2005. The Legislature may
18 adopt laws to further the purposes of Section 19 and aid in its
19 implementation. No amendment to Section 19 may be made
20 except by a vote of the people pursuant to Article II or Article
21 XVIII of the California Constitution.

22 Third—The provisions of Section 19 are severable. If any
23 provision of Section 19 or its application is held invalid, that
24 invalidity shall not affect other provisions or applications that can
25 be given effect without the invalid provision or application.

26 ~~WHEREAS, This measure shall be known and may be cited as~~
27 ~~“The Homeowner and Property Protection Act”; and~~

28 ~~WHEREAS, Eminent domain has been subject to widespread~~
29 ~~abuse in California, whereby local governmental entities have~~
30 ~~condemned property and transferred it, by sale, lease, or~~
31 ~~otherwise, to the control, management, or exploitation of private~~
32 ~~entities for private use and profit on the theory that generalized~~
33 ~~public benefits will flow therefrom; and~~

34 ~~WHEREAS, The United States Supreme Court, in Kelo v. City~~
35 ~~of New London, ___ U.S. ___ (2005), has held that the United~~
36 ~~States Constitution does not prevent the transfer of property,~~
37 ~~seized through eminent domain, to private entities for private~~
38 ~~profit; and~~

39 ~~WHEREAS, The rights guaranteed in the California~~
40 ~~Constitution are not dependent on rights guaranteed under the~~

~~United States Constitution (Section 24 of Article I of the California Constitution), and the California Constitution should protect the property rights of Californians to a greater degree than does the United States Constitution; nor should the term “public use” in the California Constitution be construed as identical to that phrase as employed in the Fifth Amendment to the United States Constitution; and~~

~~WHEREAS, It is the intent of the people of the State of California that private property shall not be taken or damaged for the use, exploitation, or management of any private party, including, but not limited to, the use, exploitation, or management of property taken or damaged by a corporation or other business entity for private profit, as is currently permitted under the United States Constitution under Kelo v. City of New London, ___ U.S. ___ (2005); and~~

~~WHEREAS, It is not the intent of this amendment to prevent the rental of space in a government building or any other government-owned property for incidental commercial enterprises, including, but not limited to, gift shops, newsstands, or shoeshine stands; and~~

~~WHEREAS, This amendment shall apply only to condemnation actions that are completed after this amendment goes into effect; now, therefore, be it~~

~~*Resolved by the Assembly, the Senate concurring,* That the Legislature of the State of California at its 2005-06 Regular Session commencing on the sixth day of December 2004, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:~~

~~That Section 19 of Article I thereof is amended to read:~~

~~SEC. 19. (a) Private property may be taken or damaged for a stated public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. Private property may not be taken or damaged for private use.~~

~~(b) Private property may be taken by eminent domain only for a stated public use and only upon an independent judicial determination on the evidence that the condemnor has proven that no reasonable alternative exists. Property taken by eminent domain shall be owned and occupied by the condemnor or may~~

1 ~~be leased only to entities that are regulated by the Public Utilities~~
2 ~~Commission. All property that is taken by eminent domain shall~~
3 ~~be used only for the stated public use.~~

4 ~~(e) If any property taken through eminent domain after the~~
5 ~~effective date of this subdivision ceases to be used for the stated~~
6 ~~public use, the former owner of the property or a beneficiary or~~
7 ~~an heir, if a beneficiary or heir has been designated for this~~
8 ~~purpose, shall have the right to reacquire the property for the~~
9 ~~compensated amount or the fair market value of the property;~~
10 ~~whichever is less, before the property may be sold or transferred.~~

11 ~~(d) The Legislature may provide for possession by the~~
12 ~~condemnor following commencement of eminent domain~~
13 ~~proceedings upon deposit in court and prompt release to the~~
14 ~~owner of money determined by the court to be the probable~~
15 ~~amount of just compensation.~~